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Federal Communications Commission

DA 99-800

DISPATCHED BY
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Llano, Texas)

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) MM Docket No. 99-131
) RM-9333
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NOTICE OF PROPOSED RULE MAKING**Adopted: April 21, 1999****Released: April 30, 1999****Comment Date: June 21, 1999****Reply Date: July 6, 1999**

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Elgin FM Limited Partnership ("Elgin"), one of three mutually exclusive applicants for Channel 242A at Llano, Texas, to resolve the mutual exclusivity for Channel 242A and provide Llano with its second and third FM channels.¹ Elgin requests that Channel 293A be allotted to Llano with cut-off protection so that it can amend its application to specify operation on Channel 293A in lieu of Channel 242A. BK Radio ("BK") filed comments in support of Elgin's petition for rule making.

¹ In response to a petition from Maxagrid Broadcasting Corporation, licensee of Station KBAE, Channel 284C3, Llano, Texas, the Report and Order in MM Docket No. 95-49 substituted Channel 285C3 for Channel 284C3 at Llano, Texas, reallocated the channel to Marble Falls, Texas, and modified Maxagrid's license for Station KBAE to specify operation on Channel 285C3 at Marble Falls. Since the reallocation removed the sole local service from Llano, Channel 242A was allotted to the community to retain the local service and the Commission conditioned the grant of operating authority for the Marble Falls station until a construction permit has been issued for Channel 242A at Llano and service has been initiated on that channel. See 12 FCC Rcd 6809 (1997), recon. denied, 63 FR 71389, December 28, 1998. The Report and Order in MM Docket 95-49 also stated that in the event multiple applications for Channel 242A at Llano were received, Channels 271A, 273A and 275A were available for allotment at Llano. The Report and Order further stated that in view of the public interest benefits of having both a first local service in Marble Falls coupled with the new allotment in Llano, we would entertain a petition for rule making for an additional channel in Llano if a competing application were filed for this allotment. See Albion, Nebraska, 10 FCC Rcd 11927 (1995).

2. Elgin proposes that the allotment of Channels 293A and 275A will eliminate the mutual exclusivity between three cut-off applications for Channel 242A at Llano, Texas.² Elgin contends that by allotting Channels 293A and 275A to Llano, all three pending applications may be granted. Further, Elgin contends that this proposal is consistent with the Commission's policy to resolve conflicts between applicants to provide the community with additional FM transmission service. See Albion, Nebraska, 10 FCC Rcd 3183 (1995), rev. denied, 10 FCC Rcd 11931 (1995). In the event there is interest expressed in the use of Channels 293A and 275A at Llano, Elgin indicates that Channel 271 can be allotted to the community.

3. BK, an applicant for Channel 242A at Llano, filed comments supporting the allotment of additional channels at Llano. BK believes that with the grant of Elgin's proposal, the public will benefit from replacement service to Llano on Channel 242A as well as additional service provided from Channels 293A and 275A. BK requests that Channel 275A be allotted to Llano and that its pending application for Channel 242A be amended with cut-off protection to specify Channel 275A. BK also requests that its application, as amended, be granted along with the other Llano applicants.

4. We believe that the proposal warrants consideration since it could eliminate the mutual exclusivity for Channel 242A and potentially provide the community with its second and third FM broadcast services. The allotment of Channel 293A would allow Elgin to amend its application for Channel 242A at Llano to specify operation on Channel 293A without loss of cut-off protection, thereby partially resolving the mutual exclusivity for the channel. In addition, since there are three applicants for Channel 242A at Llano, we believe it is in the public interest to propose the allotment of Channel 275A at Llano, allowing BK to amend its application for Channel 242A to specify operation on Channel 275A without loss of cut-off protection. Further, in the Report and Order in MM Docket No. 95-49, we recognized that additional applications could be filed for Channel 242A at Llano and that we would entertain petitions to allot additional channels. See Albion, NE, 10 FCC Rcd 11927 (1995). See also Copeland, KS, 5 FCC Rcd 7682 (1990). Since it appears that an additional equivalent class channel (Channel 271A) is available for other expressions of interest, we propose to allow the above referenced applicants to amend their applications without loss of cut-off protection.. Channels 293A and 275A can be allotted to Llano in compliance with the Commission's spacing requirements.³ Since Llano is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government will be requested for these allotments. As it appears that there is an additional equivalent class channel available for other expressions of interest at Llano, we shall propose to allow Elgin to amend its application for Channel 242A to specify operation on Channel 293A and BK to amend its application for Channel 242A to specify operation on Channel 275A, with cut-off protection.

² BK Radio (BPH-970815MD), Elgin FM Limited Partnership (BPH-970914MI), and Maxagrid Broadcasting Corporation (BPH-970815ME).

³ The coordinates for Channel 293A at Llano are 30-42-27 and 98-46-25. The coordinates for Channel 275A at Llano are 30-42-24 and 98-46-23.

5. Accordingly, we will solicit comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Llano, as follows:

Community	Channel No.	
	Present	Proposed
Llano, Texas	242A	242A, 275A, 293A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **June 21, 1999**, and reply comments on or before **July 6, 1999**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioners' counsel, as follows:

Ann C. Farhat Bechtel & Cole, Chartered 1901 L Street, N.W., Suite 250 Washington, D. C. 20036 (Counsel for Elgin FM Limited Partnership)	Lee J. Peltzman Shainis & Peltzman, Chartered 1901 L Street, N.W., Suite 290 Washington, D. C. 20036 (Counsel for BK Radio)
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8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation

and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 445 12 th Street, SW, Washington, D. C.